IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.718 OF 2006

Estate Officer & Ors. .. Petitioners

Versus

Rajesh Kanabar & Ors. .. Respondents

Mr.R.P.Behre for petitioners

CORAM : S.C.DHARMADHIKARI, J.

DATE : 13th February 2006.

P.C.

. Heard Mr.Behre for petitioner.

2. By this petition under Article 227 of the Constitution, petitioners are challenging by the

order passed by the Additional Dist.Court Pune in Civil Appeal No.112 of 2004 and Civil Appeal No.149 of 2004.

3. Common order delivered on 29th October 2005 allows both appeals and sets aside the order of Estate Officer, Pune Cantonment dated 7th February 2004. This order is passed in proceedings under Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

4. It is not disputed before me by Mr.Behre that the Pune Municipal Corporation has undertaken construction of road and that is the subject matter of the proceedings before the Estate Officer. The construction and encroachment is that of laying a road. The order under challenge takes into account the pleas raised by petitioners as well as Pune Municipal Corporation and holds that the dispute is whether Pune Municipal Corporation has encroached upon

the defence land or that the road is being laid on the land belonging to a private party. The appellate court has noted pendency of civil suit on title and Mr.Behre does not dispute that the defence department is already party defendant to the same.

5. In these circumstances, I cannot fault the conclusion of the appellate authority that summary proceedings are not maintainable under the Act to decide the issue of title to lands in question. If the land is belonging to a private party and that he has allegedly handed over the same to Pune Municipal Corporation, then the claim of the defence department has necessarily to fail. On the other hand, whether the same is part and parcel of the land belonging to defence department or not is a dispute pertaining to title to the land. That such a dispute, in the present facts and circumstances, is outside the purview of the Estate Officer, is a view which

can neither be said to be vitiated by error apparent or perverse. Petition is summarily dismissed.

6. However, it is not necessary to clarify that if after the outcome of the proceedings before the trial court, it is held that the land does not belong to the private party or that the Pune Municipal Corporation has no claim but the same land is part and parcel of the lands held by petitioners herein, then it would be open for petitioners to initiate such proceedings as are permissible in law and the order passed by the appellate authority shall not prevent either its institution or initiation or continuation.

(S.C.DHARMADHIKARI, J)